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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Moratorium on the use of the death penalty**

Report of the Secretary-General

Summary

The present report is submitted to the General Assembly pursuant to its resolution 69/186. It discusses developments towards the abolition of the death penalty and the establishment of moratoriums on executions. The report also reflects on trends in the use of the death penalty, including the application of international standards relating to the protection of the rights of those facing the death penalty. It also discusses the role of national human rights institutions and private companies, as well as regional and international initiatives for advancing the abolition of the death penalty.

* A/71/150.

** The present report was submitted after the deadline in order to reflect the most recent developments.

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I. Introduction

1. In its resolution 69/186, the General Assembly requested the Secretary-General to report on the implementation of moratoriums on the use of the death penalty at its seventy-first session. In submitting the present report, the Secretary-General draws the Assembly's attention to his recent reports to the Human Rights Council on the question of the death penalty (A/HRC/30/18 and A/HRC/33/20), and to the report of the United Nations High Commissioner for Human Right on the high-level panel discussion on the question of the death penalty (A/HRC/30/21), which was held during the twenty-fifth session of the Human Rights Council, pursuant to Council resolution 26/2. The present report covers the period from December 2014 to July 2016.

II. Availability of data on the use of the death penalty

2. In its resolution 69/186, the General Assembly calls upon all States to make available relevant information with regard to their use of the death penalty, inter alia, the number of persons sentenced to death, the number of persons on death row and the number of executions carried out, which could contribute to possible informed and transparent national and international debates, including on the obligations of States pertaining to the use of the death penalty. In its resolution 30/5, adopted in September 2015, the Human Rights Council emphasized that lack of transparency in the use of the death penalty had direct consequences for the human rights of persons sentenced to death and other affected persons. The Council also called upon States that had not yet abolished the death penalty to make available relevant information, disaggregated by sex, age and other applicable criteria with regard to their use of the death penalty.

3. The human rights treaty bodies continued to call upon States parties to ensure the accessibility of information on the death penalty, including information on the gender, age, nationality and other relevant demographics of the persons affected, and the offences for which the death penalty was invoked (see CAT/C/CHN/CO/5, para. 49, and CAT/C/SAU/CO/2, para. 42).

4. As noted by the Secretary-General in his recent reports to the Human Rights Council, up-to-date and accurate global figures on the application of the death penalty are difficult to obtain. Some Governments are reluctant to release information on the number and details of individuals executed. Reportedly, Belarus, China and Viet Nam continue to classify data on the use of the death penalty as a State secret, with disclosure amounting to a criminal offence (see A/HRC/33/20, para. 20). The lack of transparency has direct consequences for the human rights not only of the persons sentenced to death, but also for other affected persons (A/HRC/30/18, paras. 48-54).

5. In countries affected by conflicts, the problem of transparency is compounded, and execution-related information is very difficult to obtain. The Office of the High Commissioner for Human Rights (OHCHR) expressed concern that the Ministry of Justice of Iraq had ceased to communicate information to the United Nations in relation to the implementation of executions.[1]

[1] See http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17051&LangID=E.

III. Developments since the adoption of General Assembly resolution 69/186

A. Abolition of the death penalty

6. During the reporting period, several States took initiatives towards abolition of the death penalty. Of the 193 States Members of the United Nations, 169 were execution-free in 2015. A similar pattern has been reported in the first half of 2016; seven Member States, namely, the Congo, Fiji, Guinea, Madagascar, Mongolia, Nauru and Suriname, have abolished the death penalty. Côte d'Ivoire, which introduced constitutional prohibition of the use of the death penalty in 2000, enacted a law completely removing the death penalty from its Penal Code in 2015.

7. Nepal, which abolished the death penalty in 1997, adopted a new constitution that prohibits making laws providing for the death penalty.[2]

B. Moratoriums

8. In many States, moratoriums on the imposition of the death penalty have been a first step towards abolition. A recent comparative study found that long periods of legislated or de facto moratoriums on executions may allow the criminal justice system to find alternative punishments, assuage fears of rising crime rates and reduce public opposition to abolition.[3] However, in spite of long-term moratoriums, the judicial authorities in some countries continued to impose death sentences.

9. Practice has shown that moratoriums have a beneficial effect on abolition efforts. For example, Burkina Faso has not carried out any executions since 1988, and it voted for all five General Assembly resolutions supporting a moratorium. In addition, a draft bill to abolish the death penalty in the country was tabled in 2015 and remains pending.

10. The Central African Republic, an abolitionist country in practice, has not carried out executions since 1981. In 2015, new legislation in the Central African Republic established a special criminal court for investigating and prosecuting war crimes, crimes against humanity and serious human rights violations and excluded the death penalty as possible punishment.[4] Referring to resolution 69/186 on a moratorium on the use of the death penalty and to other instruments,[5] the new law sets the maximum sentence as life imprisonment.

11. The International Crimes Division of the High Court of Uganda sentenced individuals accused of terror attacks that killed 76 people and maimed many in July 2010 in Kampala to various lengths of imprisonment. Although the Anti-Terrorism

[2] Nepal, Constitution (2015), article 16(2).

[3] Delphine Lourtau and Sandra Babcock, *Pathways to Abolition of the Death Penalty*, Death Penalty Worldwide (Cornell Law School, 2016). Available from http://www.deathpenaltyworldwide.org/Pathways%20to%20Abolition%20Death%20Penalty%20Worldwide%202016-06%20FINAL.pdf.

[4] Central African Republic, Organic Law No. 15-003 (2015), sect. 59.

[5] Additional instruments cited included article 6 of the International Covenant on Civil and Political Rights; article 77 of the Rome Statute of the International Criminal Court; and the Declaration of the Continental Conference on the Abolition of the Death Penalty in Africa.

Act of Uganda still retains the death penalty for terrorist acts that result in death and the State Counsel had sought the death penalty, the Court did not order the death penalty. In its reasoning, the Court found that the death penalty was not punitive enough and that the sentencing of life imprisonment was in line with the moratorium on the death penalty that was in place in Uganda.

12. Sri Lanka expressed a commitment to continuing its 40-year de facto moratorium. Citing both moral grounds and the ineffectiveness of the death penalty as a deterrent, there was consensus among the legislative leadership of Sri Lanka that the death penalty ought to be abolished. Sri Lankan officials have acknowledged that abolishing the death penalty requires persuasion and resolve, and, in particular, the leadership of legislators, activists, editors, academics and jurors.[6]

C. Reduction of the number of offences punishable by death

13. In its resolution 69/186, the General Assembly also called upon States to reduce the number of offences punishable by death. During the reporting period, several States took initiatives to reduce the number of crimes subject to capital punishment. In China, nine crimes punishable by death were removed from the criminal law. In Viet Nam, a revision of the Penal Code abolished the death penalty for seven crimes. In Morocco, the new Code of Military Justice reduced the number of articles that referred to the death penalty from 16 to 5. The Criminal Code of Kazakhstan limits the use of the death penalty to terrorist crimes resulting in loss of life and especially grave crimes committed in wartime. In the Lao People's Democratic Republic, a draft penal code currently under consideration would reduce the number of capital offences from 18 to 8.

14. The recent report of the Secretary-General to the Human Rights Council on the death penalty provides further information on the reduction of the number of crimes punishable by death and the removal of the mandatory death penalty (see A/HRC/33/20, paras. 30-33).

D. National initiatives to advance abolition

15. The Australian Parliament conducted an inquiry into Australia's advocacy for the abolition of the death penalty. The resulting report[7] emphasized that Australia had an obligation to help eradicate the death penalty worldwide and recommended that national guidelines on international police-to-police assistance in death penalty situations be amended to prevent exposure of all persons to the risk of the death penalty.

16. In a report on the death penalty,[8] the Law Commission of India recommended that the Government of India abolish the death penalty for all crimes other than terrorism-related offences, as a first step towards full abolition. In another report

[6] Mangala Samaraweera, Foreign Minister of Sri Lanka, Address at the opening of the sixth World Congress against the Death Penalty, Oslo, 22 June 2016. Available from http://www.mfa.gov.lk/index.php/en/media/media-releases/6517-6wcdp-fm.

[7] Available from http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/Death_Penalty/Report.

[8] Available from http://lawcommissionofindia.nic.in/reports/report262.pdf.

from India, prepared by the National Law University in cooperation with the National Legal Services Authority,[9] the socioeconomic profile of prisoners sentenced to death in India and the manner in which they were sentenced to death were investigated. The aim of the report was to understand the structural realities and processes that informed the administration of the death penalty in India. It identified serious problems with fair trial guarantees, as well as particular burdens that marginalized sections of society bear in the context of the death penalty.

17. In Zambia, a parliamentary committee convened a consultation regarding the use of the death penalty and its effectiveness as a deterrent. In its report,[10] the committee recommended a debate on the appropriateness of the death penalty in the Constitution and a decision by the people of Zambia on whether or not to retain the death penalty in the Bill of Rights. It further recommended that if capital punishment were retained in Zambia, it should be imposed only for the most serious crimes.

18. In February 2016, the Constitutional Court of Guatemala declared article 132 of the Penal Code, which provides for the death penalty in cases of homicide, unconstitutional.[11] The Constitutional Court of Zimbabwe is currently hearing a case challenging the constitutionality of the death penalty.

19. In July 2015, the National Assembly of Togo adopted a law authorizing the ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights. A bill authorizing accession to the same Protocol was submitted by the Government of Niger to be considered by country's National Assembly.

IV. Trends in the use of the death penalty

A. Increase in the number of executions and executing countries

20. The number of executions reportedly increased during the period covered by the present report.[12] Another important development in 2015 was the fact that there was also an increase in the number of countries carrying out executions.[13] In his statement to the Human Rights Council in March 2016,[14] the United Nations High

[9] National Law University, *Death Penalty India Report* (Delhi, Delhi Press, 2016). Available from http://www.deathpenaltyindia.com/wp-content/uploads/2016/05/Death-Penalty-India-Report-Volume-1.pdf.

[10] Available from http://www.parliament.gov.zm/node/5042.

[11] See Guatemala, Corte de Constitucionalidad, Expediente 1097-2015 (11 February 2016). Available from http://www.cc.gob.gt/DocumentosCC/ResolucionesIntPub/1097-2015.pdf.

[12] Amnesty International reported at least 1,634 executions in 2015 compared with 607 in 2014 — a 54 per cent increase. These figures do not include executions in China. See Amnesty International, *Amnesty International Global Report: Death Sentences and Executions 2015*, index number ACT 50/3487/2016 (London, 2016) (available from https://www.amnesty.org/en/documents/act50/3487/2016/en/). See also the submission of Hands Off Cain on the death penalty worldwide 2015-2016 (on file with the Secretariat and available for consultation).

[13] According to Amnesty International, the number of countries executing rose from 22 in 2014 to 25 in 2015 (see https://www.amnesty.org/en/latest/news/2016/04/Alarming-surge-in-recorded-executions-sees-highest-toll-in-more-than-25-years/).

[14] Available from http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17200&LangID=E.

Commissioner for Human Rights said that he remained concerned about the excessive use of the death penalty in China, Iran (Islamic Republic of), Iraq, Pakistan, Saudi Arabia and the United States of America.

21. Notwithstanding recent amendments to criminal laws and procedures aimed at restricting the application of the death penalty, China has reportedly continued to execute thousands of individuals annually. One report suggested that China carried out at least 2,400 executions, about 59 per cent of the world's total executions in 2015, with a similar rate of executions reported in the first half of 2016.[15]

22. In a recent report, the Secretary-General reiterated his alarm at the staggering rate of executions in the Islamic Republic of Iran (A/HRC/31/26, para. 6). The United Nations High Commissioner for Human Rights and several United Nations special procedures mandate holders have also repeatedly expressed concern at the surging execution rate in the country, and have called on its Government to institute a moratorium on executions. At least 900 executions of individuals, including women and children, were recorded in 2015, with some sources suggesting that there were more than 1,000 executions (ibid.). As of July 2016, approximately 250 people had reportedly been executed in the Islamic Republic of Iran.[16]

23. In Saudi Arabia, at least 158 people were reportedly executed in 2015, the highest number of executions recorded in Saudi Arabia since 1995,[17] for various crimes, including terrorism-related crimes. In 2016, Saudi Arabia has continued to execute on a large scale. On 2 January 2016, the United Nations High Commissioner for Human Rights expressed deep regret at the news that 47 people had been executed in a single day in Saudi Arabia, stating that the execution was a very disturbing development, particularly as some of those executed were accused of non-violent crimes.[18]

24. An increase in the number of executions was also reported in Egypt, Indonesia, Iraq and Somalia. In July 2016, the President of Iraq reportedly approved a decision to carry out death sentences for a number of prisoners convicted of serious terrorism offenses. The Ministry of Justice of Iraq also proposed amendments to article 270 of the Code of Criminal Procedure to speed up the implementation of death sentences. The United Nations Assistance Mission for Iraq and the United Nations High Commissioner for Human Rights have repeatedly reported that the international safeguards protecting the rights of those facing the death penalty are not being implemented in Iraq. In 2015, 14 people were reportedly executed in Indonesia for drug trafficking, an offence that does not meet the threshold of "most serious crimes" under international human rights law.[17] In July 2016, four people were also reportedly executed in Indonesia for drug-related offenses.[19]

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[15] Submission by Hands Off Cain (filed with the Secretariat and available for consultation).

[16] See Iran Human Rights, "Iran: 250 executions so far in 2016", 26 July 2016. Available from http://www.iranhr.net/en/articles/2585/.

[17] See Amnesty International, *Amnesty International Global Report: Death Sentences and Executions 2015*, index number ACT 50/3487/2016 (London, 2016) (available from https://www.amnesty.org/en/documents/act50/3487/2016/en/).

[18] See http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16921&LangID=E.

[19] See International Commission against Death Penalty, " Four executions carried out by Indonesian authorities" (3 August 2016). Available from http://www.icomdp.org/2016/08/four-executions-carried-out-by-indonesian-authorities/.

25. During the reporting period, executions were also reported in Afghanistan, Bangladesh, Belarus, Botswana, the Democratic People's Republic of Korea, India, Japan, Malaysia, Oman, Singapore, South Sudan, the Sudan, the United Arab Emirates, the United States of America, Viet Nam, Yemen, the State of Palestine (Gaza Strip) and Taiwan Province of China.

B. Resumption of executions

26. The resumption of executions runs counter to the international trend towards the reduction and eventual abolition of the death penalty. The question also arises as to whether resumption after a long period is compatible with human rights. In its general comment No. 6, the Human Rights Committee concluded that all measures of abolition should be considered as progress in the enjoyment of the right to life.[20] The Special Rapporteur on extrajudicial, summary or arbitrary executions commented that any resumption of executions, as with any other measure that increases the use of the death penalty, erodes protection of the right to life (A/69/265, para. 99).

27. During the reporting period, Chad, Jordan and Pakistan resumed execution. In Pakistan, the Government announced its decision to lift the moratorium on the death penalty specifically for cases related to terrorism.[21] In Jordan, ending an eight-year de facto moratorium on the death penalty, authorities executed 11 individuals in December 2014 for terrorism-related crimes. The United Nations High Commissioner for Human Rights expressed deep regret at the lifting of the moratoriums in Pakistan and Jordan, stressing that no judiciary was infallible.[22] Chad resumed executions after lifting a de facto moratorium introduced in 2003. On 29 August 2015, 10 suspected Boko Haram members were executed by firing squad after being sentenced to death in a trial following a swift process which may not have respected international human rights law. Special procedures mandate holders of the Human Rights Council condemned the resumption of executions in Chad and called upon the authorities of Chad to amend the anti-terrorism law of 30 July 2015 and to reinstate the moratorium on the use of the death penalty, with a view to its complete abolition.[23]

V. Protection of the rights of those facing the death penalty

28. In its resolution 69/186, the General Assembly called upon States to respect international standards that provide safeguards guaranteeing protection of the rights of those facing the death penalty, in particular the minimum standards, as set out in the annex to Economic and Social Council resolution 1984/50. The authorities of Bahrain, Cuba, India, Kazakhstan, Malaysia, Morocco, Myanmar, Qatar, Saudi Arabia and the United Republic of Tanzania provided information regarding the legal guarantees and safeguards in capital cases within their respective jurisdictions. Such guarantees and safeguards include, among other things, limiting the use of the death penalty to the most serious crimes, the right to public trial, the right to legal

[20] See HRI/GEN/1/Rev.9 (Vol. I).

[21] In March 2015, Pakistan lifted the moratorium for all other capital crimes. As of June 2016, a total of 405 executions had been reported in Pakistan (reported by Justice Project Pakistan).

[22] See http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=15447&LangID=E.

[23] See http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16388&LangID=E.

representation and counsel, respect for the principle of presumption of innocence, the right to appeal, freedom from torture and the prohibition of the death penalty for minors, pregnant women and persons with mental or intellectual disabilities.

29. The United Nations human rights treaty bodies continued to address the protection of the rights of individuals facing the death penalty in concluding observations following the examination of reports of State parties and when considering individual communications.

30. The Human Rights Committee is currently preparing a general comment on article 6 of the International Covenant on Civil and Political Rights on the right to life. The general comment will consolidate the views of the Committee on key components of the right to life. The death penalty issues being reviewed and addressed include the meaning of "most serious crimes"; the prohibition on mandatory death sentences; extradition; the duty to facilitate the right to seek pardon or commutation; and protection of persons with disabilities, lactating mothers and elderly persons.[24]

31. Trends regarding the protection of the rights of those facing the death penalty can be gleaned from recent annual reports of the Secretary-General on the question of the death penalty (see A/HRC/30/18 and A/HRC/33/20). Some key trends are also outlined below.

A. Limiting the use of the death penalty to "most serious crimes"

32. In accordance with article 6(2) of the International Covenant on Civil and Political Rights, States that have not abolished the death penalty may only impose the death penalty for the "most serious crimes". This is interpreted in international human rights jurisprudence as the crime of murder or intentional killing.[25] There are currently 33 States or territories that prescribe the death penalty for "drug offences", which do not meet the threshold of "most serious crimes". The International Narcotics Control Board encouraged States that still imposed the death penalty for drug-related offences to abolish that punishment.[26]

33. The application of the death penalty for overly broad and vaguely defined terrorist offences remains a serious concern, particularly where such acts do not meet the threshold of "most serious crimes", and could amount to violation of article 6 of the Covenant. In his statement to the sixth World Congress against the Death Penalty,[27] the High Commissioner for Human Rights stated that some States criminalized the legitimate exercise of fundamental freedoms with overly vague counter-terrorism legislation. Participation in peaceful protests and criticism of a Government — whether in private, online or in the media — were neither crimes nor terrorist acts. The threat or use of the death penalty in such cases was an egregious violation of human rights.

34. Furthermore, imposition of the death penalty for offences relating to consensual adult same-sex conduct continues to be provided for in the laws of Iran

[24] Draft general comment No. 36 (CCPR/C/GC/R.36).

[25] See E/2010/10, paras. 59-68, for further information on "most serious crimes".

[26] See A/HRC/33/20, for further information on the death penalty for drug crimes.

[27] Available from http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20150&LangID=E.

(Islamic Republic of), Mauritania, Saudi Arabia, the Sudan and Yemen. In addition, local and regional courts in parts of Somalia and Nigeria continued to have the power to impose the death penalty for such offences on the basis of Sharia law. As a result, men, women and transgender persons have reportedly been sentenced to death. While no cases of executions for consensual same-sex conduct have been confirmed in recent years, the mere existence of such laws has an intimidating effect on all lesbian, gay, bisexual, transgender and intersex persons and, as with other criminalization of same-sex relationships, reinforces stigma and fuels discrimination and violence against anyone perceived to be lesbian, gay, bisexual, transgender or intersex (see A/HRC/30/18, para. 35).

35. In some countries, apostasy, blasphemy and other so-called religious crimes remain punishable by death. According to international human rights jurisprudence, non-belief or atheism can neither be considered as crimes nor do they meet the threshold of "most serious crimes" (see CCPR/C/79/Add.85, para. 8). In a statement in April 2016,[28] a spokesperson for OHCHR deplored the confirmation of the death sentence for apostasy against a blogger in Mauritania. Referring to international human rights norms, the spokesperson for the Office recommended that the Supreme Court of Mauritania overturn the death sentence. Up to 27 men were reportedly arrested in November 2015 in the Sudan for apostasy, which carries the possible punishment of death.[29] In the Islamic Republic of Iran, individuals reportedly remained under investigation for "apostasy" and "insulting the Prophet", which could carry the death penalty.[17] A court in the state of Kano of Nigeria reportedly sentenced an Islamic scholar and eight of his followers to death for blasphemy.[17] In November 2015, a Palestinian was sentenced to death in Saudi Arabia for apostasy and blasphemy-related charges.[30] Furthermore, atheists and non-believers living in 13 countries risk being condemned to death for their beliefs (or non-beliefs).

B. Fair trial guarantees

36. Imposition of the death sentence upon the conclusion of a trial that has not respected the provisions of article 14 of the International Covenant on Civil and Political Rights constitutes a violation of the right to life (see CCPR/C/GC/32, para. 59). Furthermore, forcing an individual to make or sign, under duress, a confession admitting guilt violates article 7 and article 14(3)(g) of the Covenant. Reportedly, in many States where individuals are sentenced to death or executed, the death penalty is imposed following proceedings that failed to meet international fair trial standards. In many cases, sentences were based on "confessions" that were allegedly extracted through torture or other ill-treatment.[31]

[28] Available from http://www.un.org/apps/news/story.asp?NewsID=53785#.V4ULQE1f3cs.

[29] International Humanist and Ethical Union, *The Freedom of Thought Report 2015: A Global Report on Discrimination against Humanists, Atheists and the Non-religious*. Available from http://freethoughtreport.com/download-the-report/.

[30] Human Rights Watch, "Saudi Arabia: poet sentenced to death for apostasy", 23 November 2015. Available from https://www.hrw.org/news/2015/11/23/saudi-arabia-poet-sentenced-death-apostasy.

[31] For further details on fair trial guarantees, see A/HRC/33/20, paras. 30-39.

C. Prohibition of extradition, expulsion or deportation in death penalty cases

37. Pursuant to international human rights jurisprudence, an individual should not be extradited or deported to a country where there is a "necessary and forseeable consequence" that article 6 of the International Covenant on Civil and Political Rights will be violated.[32] In February 2015, the European Court of Human Rights held that Poland had committed multiple violations of the European Convention on Human Rights[33] and its Protocol No. 6 concerning the abolition of the death penalty by enabling the transfer of a Saudi national into the custody of the United States of America. The Court found that Poland had exposed the individual to a foreseeable serious risk of the death penalty following trial, and required Poland to remove this risk by seeking assurances from the United States.[34] The Australian Parliament's inquiry on the death penalty (see para. 15) recommended that the authorities ensure that current legislative arrangements for extradition comply with Australia's obligations under the Second Optional Protocol to the Covenant.[7]

VI. Prohibition of the use of the death penalty against children, persons with mental or intellectual disabilities and other vulnerable groups

A. Children

38. Reportedly, the legislation of 15 States continues to allow the application of the death penalty to individuals accused of committing a crime while under the age of 18, a violation of articles 6 of the International Covenant on Civil and Political Rights and 37 of the Convention on the Rights of the Child.[35] According to the United Nations Children's Fund (UNICEF), there were reports of juveniles sentenced to the death penalty under the Anti-Terrorism Act of Pakistan. The Committee on the Rights of the Child expressed great concern about the continued execution of juveniles in the Islamic Republic of Iran, and called for abolition of the death penalty as a means of punishment for children (see CRC/C/IRN/CO/3-4). Juvenile offenders are also reportedly on death row in Maldives, Saudi Arabia and Yemen.

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[32] See CCPR/C/61/D/706/1966, para. 8.1 (available from http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f61%2fD%2f1706%2f1996&Lang=en), see also Commission on Human Rights resolution 2005/59.

[33] Violation of articles 3, 5, 6 and 8 of the European Convention on Human Rights, as well as article13, when read in conjunction with article 3.

[34] See European Court of Human Rights, *Al Nashiri v. Poland*, application No. 28761/11, Judgment, 24 July 2014. Available from http://hudoc.echr.coe.int/eng?i=001-146044&%7B%22itemid%22%3A%5B%22001-146044%22%5D%7D#{"itemid":["001-146044"]}.

[35] See Child Rights International Network, "The death penalty: inhuman sentencing of children". Available from http://www.crin.org/en/home/campaigns/inhuman-sentencing/problem/death-penalty.

B. Persons with mental or intellectual disabilities

39. In its resolution 69/186, the General Assembly, reaffirming existing international human rights norms and jurisprudence, called upon States not to impose the death penalty on persons with mental or intellectual disabilities. During the period under review, it was reported that individuals with mental or intellectual disabilities were executed or awaiting execution in several countries, including the Democratic Republic of the Congo, Indonesia, Japan, Pakistan, Trinidad and Tobago and the United States.[36]

40. Courts in the Caribbean region have continued to restrict the implementation of the death penalty, specifically in relation to those with mental illness. In one case,[37] a court quashed a death sentence by substituting a conviction for murder with a verdict of manslaughter on the grounds of diminished responsibility.

41. Medical experts play a crucial role in the prohibition of the use of the death penalty against persons with mental or intellectual disabilities. Responding to the need to enhance the skills of medical experts who participate in the criminal justice process, the Death Penalty Project of the United Kingdom organized a series of focused forensic psychiatry training workshops in Barbados, Jamaica, Kenya, Malaysia, Saint Kitts and Nevis, Trinidad and Tobago and Taiwan Province of China.

C. Minorities

42. Under article 26 of the International Covenant on Civil and Political Rights, all persons are equal before the law and are entitled to equal protection without any discrimination. However, in many countries, the death penalty is imposed and carried out more frequently against persons belonging to minority groups, and such groups are subject to higher rates of arrest, detention and sentencing. In addition to being disproportionately targeted under laws providing for the death penalty, persons belonging to minorities face further difficulties during trial processes. Disadvantages are often compounded by poverty and low rates of education and literacy in marginalized sections of society.

43. At its eighth session, held in November 2015 pursuant to Human Rights Council resolutions 6/15 and 19/23, the Forum on Minority Issues considered the theme of "Minorities in the criminal justice system" and discussed issues related to the use of the death penalty against minorities. It recommended that in countries that had not abolished the death penalty, States should ensure that it is not applied as a result of discriminatory or arbitrary application of the law, including, the lack of equal access to competent legal assistance. It further recommended that States implement safeguards guaranteeing protection of the rights of those facing the death penalty and undertake further studies to identify the underlying factors contributing to the substantial racial and ethnic disparities in the application of the death penalty, with a view to developing effective strategies aimed at eliminating discriminatory

[36] Submissions of the Director of Public Prosecutions of the United Kingdom of Great Britain and Northern Ireland, Justice Project Pakistan, Amnesty International and Reprieve (on file with the Secretariat and available for consultation).

[37] Court of Appeal of Trinidad and Tobago, *Robinson v. The State*, Privy Council appeal No. 0038 of 2013 (20 July 2015). Available from https://www.jcpc.uk/cases/docs/jcpc-2013-0038-judgment.pdf.

practices. The Forum further noted evidence that in some countries the death penalty was imposed and carried out more frequently against persons belonging to minority groups. It recommended that this fact be considered by States as an additional, decisive argument in favour of abolition (see A/HRC/31/72, paras. 71 and 72).

D. Foreign nationals, including migrant workers

44. In his most recent report to the General Assembly, the Special Rapporteur on extrajudicial, summary or arbitrary executions explored the extent to which violations of safeguards designed to regulate the death penalty particularly impact an often already marginalized group, namely, foreign nationals (including migrant workers), and what additional responsibilities States have in this regard. The Special Rapporteur concluded that in States that have not yet abolished it, the impact of the death penalty on foreign nationals draws attention to various structurally discriminatory dimensions to its application, including financial or linguistic barriers, which may also impact domestic defendants. At the same time, the direct responsibilities that other States have with respect to the protection of the right to life of their nationals to intervene via consular services, implies a duty of due diligence with respect to nationals potentially facing the death penalty overseas (see A/70/304, paras. 112-120).

45. With regard to the protection of foreign nationals facing the death penalty, the Special Rapporteur stated that law enforcement officials of the prosecuting State had a duty to notify criminal suspects whom they had grounds to believe to be foreign nationals of their right to consular notification and access under the Vienna Convention on Consular Relations. The Special Rapporteur also recommended that States that had abolished the death penalty should take all reasonable steps to ensure that their citizens do not face the death penalty overseas (ibid.).

46. Mexico reported that its legal assistance programme for death penalty cases ensured legal representation in pretrial court proceedings, appeals and post-sentencing in cases involving Mexican nationals abroad. From its inception in 2000 until March 2016, the programme had analysed 1,735 cases involving Mexican nationals facing legal proceedings in the United States for murder. Through its intervention, the programme had helped prevent or reverse the application of the death penalty in 958 cases. The success of Mexico's legal assistance programme shows that the active defence of people facing the death penalty can have a measurable and significant impact in reducing the application of the death penalty.

47. The Australian Parliament's inquiry on the death penalty recommended that the Department of Foreign Affairs and Trade develop guidelines for its support to Australians at risk of the death penalty overseas. The document should guide the coordination of consular assistance, diplomatic representation, legal support and funding assistance, communication and media strategies and other forms of support offered by the Government.[7]

VII. The role of national human rights institutions in the implementation of General Assembly resolution 67/176

A. Advocacy

48. In retentionist and de facto abolitionist States, national human rights institutions have continued to play an important advocacy role in encouraging the abolition of the death penalty or the imposition of a moratorium pending abolition. The national human rights institution of Kenya published a position paper outlining its opposition to the death penalty,[38] submitting that "the death penalty constitutes a violation of the most fundamental right, the right to life" and that "enforcement of the death penalty amounts to cruel, inhuman and degrading treatment and punishment of the condemned person". In January 2016, the national human rights institution of Sri Lanka also recommended abolition of the death penalty, noting that the death penalty "seriously violates several human rights, including the right to life and freedom from cruel and inhuman punishment, is an extreme and irreversible punishment and is ineffective as a deterrent to crime."[39] In annual reports to legislatures, several national human rights institutions, such as those in Guatemala, Kenya, Mongolia, Morocco and Sri Lanka, recommended abolition of the death penalty and ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights. Acting upon such a recommendation, the Parliament of Mongolia ratified the Second Optional Protocol and removed the death penalty from the Penal Code.[40]

49. National human rights institutions also foster debate and raise awareness. The national human rights institution of Morocco held a national debate, with civil society and public participation, regarding the death penalty. The national human rights institution of Mali organized an expert meeting on the death penalty aimed at shifting political and public opinion by sharing lessons learned from abolitionist States in the region. The declaration adopted at the end of the meeting sets out strategic action on the path to abolition.

50. The national human rights institution of Australia has promoted the abolition of the death penalty at the Commonwealth Heads of Government Meeting and the meeting of the Association of Southeast Asian Nations Intergovernmental Commission on Human Rights. In December 2014, the national human rights institution of Algeria organized, in collaboration with OHCHR, an expert seminar on the abolition of the death penalty in the Middle East and North Africa to evaluate efforts and discuss constraints and challenges at the regional level. National human rights institutions also regularly use the universal periodic review process to draw attention to issues related to the death penalty.

[38] Available from http://www.knchr.org/Portals/0/CivilAndPoliticalReports/PP2%20-%20Abolition%20of%20the%20death%20penalty%20-%20final.pdf.

[39] See http://hrcsl.lk/english/wp-content/uploads/2016/01/RECOMMENDATION-TO-ABOLISH-THE-DEATH-PENALTY-IN-SRI-LANKA-E-1.pdf.

[40] Submission of the national human rights institution of Mongolia (on file with the Secretariat and available for consultation).

B. Research

51. National human rights institutions conduct essential research to illuminate the debate on capital punishment. Concerned at the lack of empirical research on the death penalty, the Supreme Court of India invited the country's national human rights institution to conduct research to allow for an up-to-date and informed discussion. The Asia Pacific Forum has reviewed comparative differences between international norms and domestic laws of its members to identify legislative gaps. The efforts of national human rights institutions can be an important tool in gathering data and increasing transparency. For example, the national human rights institution of Sri Lanka has undertaken an initiative to ascertain the number of people on death row in the country.

C. Technical support

52. National human rights institutions have also provided assistance and support to the judiciary to reduce the number of executions. In Morocco, the national human rights institution published documentation that offered judges alternative viewpoints on jurisprudence and highlighted the fact that a judge should refuse to impose the death sentence in cases that would violate international human rights law.[41] The national human rights institution in Nigeria worked with Lawyers without Borders to provide, in the context of the death penalty, capacity-building for lawyers, free legal assistance to inmates, awareness-raising for political and judicial stakeholders and the strengthening of advocacy and communication. The national human rights institution of Uganda provided a position paper on proposed legislation to restrict the application of the death penalty to the most serious crimes, which analysed the bill in light of relevant international human rights standards.

D. Monitoring compliance with international standards

53. National human rights institutions are important actors in monitoring compliance with standards for the protection of the rights of persons facing the death penalty. The national human rights institution of Malawi successfully challenged the constitutionality of the mandatory death penalty before the Supreme Court of Malawi,[42] resulting in an amendment of the Penal Code, whereby the mandatory death penalty was removed. Furthermore, the national human rights institution of Malawi conducted a resentencing project which identified problems with the justice system and found that lack of resources had placed excessive pressure on legal aid services, resulting in ineffective representation and the sentencing of juvenile offenders to death in error.[43]

54. The national human rights institution of Afghanistan has recommended that the Government work to overcome certain challenges with the judicial system to

[41] Submission by the national human rights institution of Morocco (on file with the Secretariat and available for consultation).

[42] High Court of Malawi, *Kafantayeni v. Attorney General*, constitutional case No. 12 of 2005 (27 April 2007).

[43] See Malawi Human Rights Commission, *Annual Report 2014* (Lilongwe, 2015). Available from http://www.hrcmalawi.org/2014annualreport.pdf.

better ensure respect for international standards with regard to the death penalty and that the Government impose a moratorium on executions with a view to abolition. In 2016, as part of its monitoring of trials, the Commission expressed concerns publicly regarding the failure to ensure fair trials for several individuals who were sentenced to death.[44] The national human rights institution of Maldives has corresponded with the Prosecutor General's office regarding the number of minors sentenced to death.[45] Upon the intervention of the national human rights institution of India, a death sentence of a juvenile was commuted.[46] The Sindh Human Rights Commission, a regional human rights institution in Pakistan, released observations regarding a capital case where there were serious doubts about the age of the convict and the sole evidence for his conviction was a confession possibly extracted under torture. Mexico's national human rights institution works to avoid the execution of Mexicans sentenced to death abroad by monitoring relevant criminal cases and keeping the Ministry of Foreign Affairs informed of such cases.[47]

VIII. The role of private companies in advancing the abolition of the death penalty

55. During the reporting period, at least nine companies took steps to prevent prison authorities from purchasing their drugs for lethal injection. For instance, the pharmaceutical company Pfizer announced restrictions on the sale of seven products that have been part of lethal injection protocols in some States. Generics drug manufacturer Akorn announced that it would prohibit future sales of drugs for executions.[48]

56. The United Nations High Commissioner for Human Rights welcomed the announcement by Pfizer and called on all businesses to act in accordance with their human rights responsibilities as set out in the Guiding Principles on Business and Human Rights to avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur as well as to seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services. He emphasized that companies beyond the pharmaceutical industry might be involved in activities relating to the administration of the death penalty, and called on such businesses to carry out human rights due diligence to ensure that they are not contributing to the use of capital punishment. He also urged States not to resort to questionable sources for the drugs required to administer lethal injections.[49]

57. At the national and regional levels, institutions focused on promoting responsible business worked closely with companies to prevent the use of drugs in executions. For instance, the national contact point in the Netherlands of the

[44] See http.www.aihrc.org.af/home/press_release/5590.

[45] Submission of the national human rights institution of Maldives (on file with the Secretariat and available for consultation).

[46] India, Law Commission of India, "The death penalty", report No. 262 (New Delhi, 2015). Available from http://lawcommissionofindia.nic.in/reports/report262.pdf.

[47] Submission of the national human rights institution of Mexico (on file with the Secretariat and available for consultation).

[48] Submission of Reprieve (on file with the Secretariat and available for consultation).

[49] See http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19991&LangID=E.

Organization for Economic Cooperation and Development reached an agreement with Dutch drug manufacturer Mylan to impose standard distribution controls that prohibit the use of its products for executions. The European Union took steps to strengthen Europe-wide export licensing procedures for products sought by prisons for use in executions.

IX. International and regional initiatives relating to the implementation of General Assembly resolution 67/176

A. Human Rights Council

58. Pursuant to its resolution 26/2, the Human Rights Council held its first biennial high-level panel discussion on the question of the death penalty on 4 March 2015, at its twenty-eighth session. The panel discussed regional efforts aimed at abolition of the death penalty and the challenges faced in that regard (see A/HRC/30/21). In adopting resolution 30/5, the Council urged all States to protect the rights of persons facing the death penalty and other affected persons by complying with their international obligations, including the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment.

59. Special procedures mandate holders of the Council continued to monitor the application of international human rights standards for the protection of rights of those facing the death penalty. During the reporting period, the Special Rapporteur on extrajudicial, summary or arbitrary executions and other mandate holders urged the authorities of Afghanistan, Bangladesh, Belarus, Chad, the Democratic People's Republic of Korea, Egypt, the Gambia, Indonesia, Iran (Islamic Republic of), Iraq, Maldives, Pakistan, Saudi Arabia, Singapore, Somalia, the Sudan and the United States to maintain stringent respect for international human rights standards, including due process and fair trial guarantees, in death penalty cases. During the universal periodic review process, the Council also continued to address the death penalty issue, with several States accepting recommendations on moratoriums and the path towards abolition.

60. In their submissions, Argentina, Australia, Bosnia and Herzegovina, Finland, France, Italy, Mexico, Morocco, Portugal, Spain, New Zealand, Slovenia, Switzerland and Venezuela referred to their initiatives for addressing the issue of the death penalty during sessions the of the Council and the universal periodic reviews.

B. Office of the High Commissioner for Human Rights

61. The OHCHR management plan for 2014-2017 includes a specific strategic focus aimed at increasing the number of States that have abolished the death penalty or, pending abolition, increasing the compliance of retentionist States with international human rights norms and standards. During the reporting period, OHCHR, in cooperation with Argentina, Benin, Fiji, Italy, Rwanda and the European Union, organized a series of global and regional events on the theme "Moving away from the death penalty", which focused on drug offences and terrorism, the rights of victims and regional efforts in Africa. During the sessions of the Human Rights Council, in cooperation with Australia, Belgium, France, Mexico and Switzerland, OHCHR organized side events and expert meetings on protection of the rights of persons

facing the death penalty abroad and the role of national human rights institutions in the abolition of the death penalty. OHCHR also released a publication entitled *Moving Away from the Death Penalty: Arguments, Trends and Perspectives*.[50]

62. OHCHR also continued to monitor the application of the death penalty. Its country and regional offices provided technical assistance and advice for advancing abolition in Afghanistan, Guinea, Guatemala, Indonesia, Maldives, Pakistan, Saudi Arabia, Thailand, Uganda, the United States and the State of Palestine. OHCHR also provided a submission to Australia's parliamentary inquiry on the abolition of the death penalty.[51]

C. United Nations peacekeeping operations, country teams and other entities

63. United Nations peacekeeping missions, country teams in several States continued to monitor the use of the death penalty and provide technical advice and assistance for advancing the abolition of the death penalty and for the protection of the human rights of persons facing the death penalty. For instance, the United Nations Assistance Mission for Iraq has repeatedly and publicly reported on problems in the implementation of international standards providing safeguards to those facing the death penalty. The United Nations country team in Belarus organized an international conference on the death penalty in Minsk in March 2016. The Office of the United Nations Resident Coordinator in Zambia presented a submission on international human rights standards on the use of the death penalty to the country's National Assembly in 2015. UNICEF continued to advocate for the prohibition of the use of the death penalty against juvenile offenders. The United Nations Office on Drugs and Crime continued to call for the abolition of the death penalty for drug offences.[52]

D. Sixth World Congress against the Death Penalty

64. Under the sponsorship of Australia, France and Norway, Ensemble contre la peine de mort and the World Coalition against the Death Penalty organized the sixth World Congress against the Death Penalty in June 2016. In the Declaration adopted at the end of the Congress,[53] participants called on States to work towards the abolition of the death penalty by implementing a moratorium on death sentences and executions, in compliance with resolutions adopted by the General Assembly on a moratorium since 2007. They also called upon States to follow the 81 countries that had already ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights and called upon intergovernmental and international

[50] Available from http://www.ohchr.org/Lists/MeetingsNY/Attachments/52/Moving-Away-from-the-Death-Penalty.pdf.

[51] See http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/Death_Penalty/Submissions.

[52] See https://www.unodc.org/unodc/en/press/releases/2015/April/statement-of-the-unodc-executive-director-yury-fedotov-on-the-use-of-the-death-penalty-in-indonesia.html.

[53] Available from http://congres.abolition.fr/wp-content/uploads/2016/06/Final-Declaration-of-the-6th-World-Congress-Against-the-Death-Penalty.pdf.

organizations to continue and intensify cooperation with States and civil society to promote the universal abolition of the death penalty.

E. Regional initiatives

65. In its general comment No. 3 regarding the right to life,[54] the African Commission on Human and Peoples' Rights sets out its position against the death penalty, describes minimum standards under international law concerning its use and makes recommendations regarding due process, the execution of vulnerable individuals, transparency of executions, including advance notice of executions and post-execution treatment of the body.

66. During the reporting period, the Committee of Ministers of the Council of Europe held consultations on ratification of Protocols 6 and 13 to the European Convention on Human Rights and on developments in observer States, such as Japan and the United States of America, and in neighbouring countries, such as Jordan and Tunisia. The various organs of the Council of Europe issued statements regretting executions in Belarus, Japan and the United States of America. In its Action Plan on Human Rights and Democracy 2015-2019, the European Union lists abolition of the death penalty as a key priority.[55] The European Union has also called for the comprehensive inclusion of the issue in all European Union support actions towards partner countries and civil society organizations. The Organization for Security and Cooperation in Europe reported that its participating States had agreed to consider the potential abolition of the death penalty, to exchange information towards that end and to make information on the use of the death penalty available to the public.

67. In June 2015, on the twenty-fifth anniversary of the Protocol to the American Convention on Human Rights to Abolish the Death Penalty (adopted in 1990), the Inter-American Commission on Human Rights welcomed the progress that had been made over the years towards the abolition of the death penalty. The Commission urged the Member States of the Organization of American States that retained the death penalty to abolish it, or to impose a moratorium on its use as a step towards abolishing it, and further urged those States that had not done so to ratify the Protocol.[56]

X. Conclusion and recommendations

68. **In the light of the evolution of international human rights law and jurisprudence and State practice, the imposition of the death penalty is incompatible with fundamental tenets of human rights, in particular human dignity, the right to life and the prohibition of torture or other cruel, inhuman or degrading treatment or punishment. The application of the death penalty has often been found to violate the right to equality and the principle of non-discrimination in the administration of justice. I am concerned that the decision about whether to sentence a convict to death or to lesser punishment is**

[54] Available from http://www.achpr.org/files/instruments/general-comments-right-to-life/general_comment_no_3_english.pdf.

[55] Available from http://eeas.europa.eu/factsheets/news/150720_eu_action_plan_on_human_rights_and_democracy_2015-2019_factsheet_en.htm.

[56] See http://www.oas.org/en/iachr/media_center/PReleases/2015/062.asp.

far too often arbitrary and does not necessarily follow predictable, rational criteria. The odds are often stacked against the poor, persons belonging to racial and other minorities and other groups that are commonly targets of discrimination, including women, foreign nationals and migrant workers.

69. I am convinced that there is no evidence that the death penalty deters crime more than other forms of punishment. It is not the severity of punishment that deters wrongdoers, but its certainty. To curb crime, the focus should therefore be on reforming the justice system to ensure that it complies with international human rights law and is more effective and humane.

70. I welcome the considerable progress that has been made towards the universal abolition of the death penalty since the adoption of General Assembly resolution 69/186. Seven States abolished the death penalty for all crimes in the period from December 2014 to July 2016. Still, serious challenges remain. It is a matter of grave concern to me that the overall number of executions worldwide increased in 2015. Furthermore, in spite of having maintained long-term moratoriums, some States resumed executions. I believe that resumptions of executions go against the spirit of international human rights law.

71. Moratoriums are useful transition tools towards abolition. States with moratoriums should maintain and strengthen their policies against the death penalty. Pending abolition, national prosecutors may consider refraining from seeking the death penalty. Judges may consider not imposing it.

72. States that have abolished the death penalty should not reintroduce it. Constitutional prohibitions add a strong protective barrier in States that have ended the death penalty. They make resuming its use far more difficult and should be considered by all States. Furthermore, States should ratify or accede to the Second Optional Protocol to the International Covenant on Civil and Political Rights. When a State ratifies the Protocol, it guarantees that nobody can be executed within its jurisdiction. International law does not permit a State that has ratified or acceded to the Second Optional Protocol to denounce it or withdraw from it. The Protocol thus guarantees permanent non-reintroduction of the death penalty in States parties.

73. Pending abolition, retentionist States must bring their practices into compliance with international human rights standards. In particular, as stipulated in article 6(2) of the International Covenant on Civil and Political Rights on the right to life, the imposition of the death penalty is limited to the "most serious crimes", that is, intentional killing. Accordingly, the death penalty must not be imposed for drug offences, consensual same-sex activities, adultery, sodomy, blasphemy or so-called "religious crimes", as they do not meet the threshold of "most serious crimes". Even in the case of the most serious crimes the death penalty should not be mandatory. Courts should be provided the discretion to consider the particularities of each individual case, including any mitigating factors, such as respect for the principle of non-discrimination, poverty and other socioeconomic factors. Furthermore, States must adhere to fair trial guarantees as stipulated in article 14 of the Covenant.

74. States that still use the death penalty must ensure that juvenile offenders are not subject to it. Persons who have been sentenced to death for crimes committed when they were under the age of 18 should be resentenced to a lesser

sentence. I also call on States to ensure that persons with mental or intellectual disabilities are not sentenced to death. Laws and sentencing guidelines must be developed or amended to prohibit the unlawful sentencing and execution of such persons.

75. **The use and implementation of the death penalty without the requisite transparency casts doubt on the compliance with international human rights standards. Retentionist States should systematically and publicly provide full and accurate data on death sentences, including information on the crimes charged and the characteristics of convicted and executed persons. Disaggregated data, including on gender, age, nationality and other relevant demographics of the persons affected, are necessary to ensure compliance with international human rights standards. I do not believe that there is any valid reason to establish death penalty data as classified or a "State secret".**

76. **National human rights institutions in many States have played an important role in encouraging abolition of the death penalty or the imposition of a moratorium pending abolition, including through their advice to Governments and engagement with civil society and the public to foster debate and raise awareness. Additional work by national human rights institutions has included the monitoring of trials to ensure compliance with international human rights law. States should support initiatives by national human rights institutions, provide them with the necessary resources and implement their recommendations related to the introduction of moratoriums aimed at the abolition of the death penalty.**

77. **The international community, including United Nations offices, peacekeeping missions, departments, agencies and funds, as well as regional intergovernmental bodies and other entities, such as non-governmental organizations, should continue and strengthen their support for the global abolition of the death penalty. I call on all States to cooperate with these bodies and organizations in their efforts towards the abolition of the death penalty. Furthermore, all businesses and private companies should act in accordance with their human rights responsibilities as set out in the Guiding Principles on Business and Human Rights. This is necessary in order to ensure that their operations, products or services do not contribute to the practice of the death penalty.**